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IN THE

Supreme Court of the United States

October Term, 1940.

No. 786.

CHERRY-BURRELL CORPORATION and THE GIRDLER CORPORATION,
Petitioners-Defendants,

v.

THE CREAMERY PACKAGE MANUFACTURING COMPANY,
Respondent-Plaintiff.

Petitioners' Reply to Brief for Respondent in Opposition to Petition for Writ of Certiorari.

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PETITIONERS' REPLY TO BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

In reply to the brief for respondent in opposition to petition for certiorari herein, petitioners respectfully direct the attention of this Honorable Court to the authorities listed on page 17 of respondent's brief. These authorities are cited by respondent in support of the decision of the Court below and, consequently, in support of the proposition that the mere sending of an infringement notice by a patentee in and of itself immediately gives rise under the Declaratory Judgment Act to an "actual controversy" within the meaning of that Act, notwithstanding the patentee promptly thereafter makes a tender of license to the alleged infringer and the latter thereupon advises the patentee that he has taken the matter under consideration and that he will communicate further with the patentee "within the next few days".

But thereby respondent has itself refuted the assertion (Brief, p. 19) that the "authorities show no conflict of deci-

sion and clearly establish that a notice of infringement and a threat to take legal action, without more, is such a denial and challenge of a party's right to continue its manufacture and sale of the accused device as to create an actual justiciable controversy and to entitle the threatened party to bring a Declaratory Judgment action".

For, such authorities but emphasize and intensify the conflict upon that very question with those decisions cited on pages 8 to 12 inclusive of the petition. And that question is not only a federal question of great importance to patent owners and supposed infringers but is as well a question of wide and general public interest. It is a question that has not been, but should be, settled by this Court.

With respect to respondent's contention (Brief, pp. 23, 24) that the Court below correctly construed the decision of this Court in *Keystone Driller Co. v. General Excavator Co.*, 290 U. S. 240, as without application to the respondent's conduct in the case at bar, it need only be inquired by what reasoning respondent reaches the conclusion that its letters and representations immediately preceding the filing of its complaint herein had no "immediate and necessary relation to the equity" that it seeks in respect of the matter here in litigation.

The petition should be granted.

Respectfully submitted,

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